

#### **401 KAR 9:010. Section 401 Individual Water Quality Certification public notice.**

RELATES TO: KRS 224.01-010, 224.10-100, 224.16-050, 224.16-070, 350.060, 33 U.S.C. 1251-1387, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.16-050, 33 U.S.C. 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.16-050 authorizes the cabinet to certify pursuant to 33 U.S.C. 1341 that applicants for a federal permit regarding the construction or operation of facilities, which may result in a discharge of dredged or fill material into the waters of the Commonwealth, as defined in KRS 224.01-010(33), shall comply with the applicable provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. This administrative regulation establishes the procedures for public notice of Section 401, Individual Water Quality Certifications. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation is not more stringent than the federal counterpart.

Section 1. Public Notice. (1) The cabinet shall give public notice of receipt of a complete application for a Section 401 Individual Water Quality Certification.

(a) A complete application shall contain the information necessary to allow a meaningful review of the project based on its merits.

1. An applicant for a project relating to surface mining coal operations shall submit the Application for Water Quality Certification for Surface Coal Mining Activities.

2. All other applicants seeking certification shall submit the Application for Permit to Construct Across or Along a Stream and/or Water Quality Certification.

(b) If an application is incomplete, a notice shall be sent to the applicant indicating the areas of the application that are deficient.

(2) Section 401 Individual Water Quality Certification public notices may describe more than one (1) certification or action and may be a part of other public notices under the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387.

Section 2. Methods. (1) The cabinet shall post public notices on its Web site, [www.eec.ky.gov](http://www.eec.ky.gov); and

(2) The cabinet shall give public notice to:

(a) An applicant or person who has requested an electronic copy of Section 401 Individual Water Quality Certification public notices; and

(b) An applicant or person who has requested to be notified by standard mail of Section 401 Individual Water Quality Certification public notices.

Section 3. Content. A public notice shall contain at least the following information:

(1) The name and address of the applicant and, if different, the address or location of the activity regulated by the certification;

(2) The name, address, and telephone number of the applicant or applicant's representative to contact for further information;

(3) A brief description of the comment procedures, including deadlines;

(4) A brief description of the proposed activity and its purpose;

(5) The location of the waters of the Commonwealth affected by the proposed activity; and

(6) The location and availability of the application for public inspection.

Section 4. Public Comment. (1) The public comment period shall expire thirty (30) days from the date of the public notice.

(2) The cabinet shall consider comments prior to making a final determination on a certification.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Water Quality Certification for Surface Coal Mining Activities", Form DNR-WQC, July 2008.

(b) "Application for Permit to Construct Across or Along a Stream and/or Water Quality Certification", July 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Water, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (34 Ky.R. 2369; 35 Ky.R. 34; 259; eff. 8-21-08; TAm eff. 7-8-2016.)